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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.36486 (2013/NN, ex 2013/N) – Poland – Aid to PKP IC for the purchase of long-distance passenger rolling stock

Dear Sir,

1. PROCEDURE

(1) On 4 April 2013, Poland notified the above-mentioned measure in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). By letters of 4 June 2013 and 26 August 2013, the Commission requested further information, which was provided by Poland by letters of 27 June 2013 and 23 September 2013.

(2) By letters of 7 and 21 November 2013, Poland submitted further information. By letter of 26 November 2013, the Commission informed Poland, that it would reclassify the case as an unnotified case (an NN case), since the grant had already been committed to the beneficiary before its notification to the Commission. Poland submitted further information by letter of 5 December 2013.

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2. DESCRIPTION OF THE MEASURE

2.1. The regional investment project

(3) The measure consists of a direct grant and a State guarantee to facilitate the acquisition of new rolling stock with a dedicated maintenance workshop as part of a regional investment project. The rolling stock is to be used for long-distance passenger rail transport in Poland.

(4) The beneficiary of the measure is PKP Intercity S.A. (hereinafter: PKP IC), a passenger rail operator fully owned by Polskie Koleje Państwowe S.A. (PKP SA). PKP IC operates on the passenger rail transport market in Poland, both under public service contracts (hereinafter: PSCs)[1] as well as providing commercial passenger rail services. The PSCs and commercial services are distinct parts of PKP IC's activities, with separate cost and revenue accounts. PKP IC's share of passenger transport in Poland is around 4.5%, while its share of the passenger rail market in Poland accounts for around 13%.

Purchased rolling stock and the maintenance workshop

(5) Under the project, PKP IC purchased 20 electrical multiple unit passenger trains (hereinafter: EMUs) that are characterized by[2]:

- a maximum speed of 250 km/h;
- a capacity of 402 passenger seats (57 1st-class seats and 345 2nd class seats);
- a length of 200 meters;
- a weight of 395.5 tonnes;
- power systems: 3 kV, 15 kV 16 and 2/3Hz, 25 kV 50 Hz;
- power per unit: around 5500 – 6000 kW;
- axle pressure on the track : 170 kN.

(6) The project also covers the construction of a technical maintenance workshop (hereinafter: the workshop), located in Warsaw. The workshop is intended to provide support, maintenance and conservation services to the purchased EMUs. According to Poland, there is a need for a new workshop because the existing technical facilities of PKP IC are not suitable to handle a fleet as technically advanced as the purchased EMUs. The workshop will exclusively serve the EMUs.

(7) The project is already being implemented. The full operational capacity of the project, understood as putting all EMUs into operation, is scheduled for December 2014.

Serviced routes and regions

(8) The EMUs will be used to provide commercial inter-regional rail services on the following routes:

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[1] As defined by Regulation (EC)1370/2007 of 23 October 2007 on on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315 of 3.12.2007, p.1

[2] On 30 May 2011, PKP IC signed a contract with Alstom on the purchase of 20 EMUs based on the ETR 610 model.

– Warszawa – Trójmiasto (Gdańsk, Gdynia, Sopot),
– Warszawa – Kraków – Rzeszów,
– Warszawa – Katowice – Bielsko-Biala/Gliwice,
– Warszawa – Włoszczowa – Częstochowa – Opole – Wrocław.

(9) The services will thus cover the Pomorskie, Warminsko-Mazurskie, Mazowieckie, Łódzkie, Świętokrzyskie, Małopolskie, Podkarparcie, Opolskie and Dolnośląskie Voivodships (Regions).

Table 1: Regions covered by the project

NUTS I	NUTS II	NUTS III
PL1 Region Centralny	PL11 Łódzkie	PL115 piotrkowski
		PL117 skierniewicki
	PL12 Mazowieckie	PL121 ciechanowsko-płocki
		PL122 ostrołęcko-siedlecki
		PL127 Warszawa
		PL129 warszawski-wschodni
		PL12A warszawski-zachodni
PL2 Region Południowy	PL21 Małopolskie	PL213 Kraków
		PL214 krakowski
		PL217 tarnowski
	PL22 Śląskie	PL224 częstochowski
		PL225 bielski
		PL228 bytomski
		PL229 gliwicki
		PL22A katowicki
		PL22B sosnowiecki
		PL22C tyski
PL3 Region Wschodni	PL32 Podkarpackie	PL325 rzeszowski
		PL326 tarnobrzeski
	PL33 Świętokrzyskie	PL331 kielecki
		PL332 sandomiersko-jędrzejowski
PL5 Region Południowo-Zachodni	PL51 Dolnośląskie	PL514 Wrocław
		PL518 wrocławski
	PL52 Opolskie	PL521 nyski
		PL522 opolski
PL6 Region Północny	PL62 Warmińsko-Mazurskie	PL621 elbląski
	PL63 Pomorskie	PL633 trójmiejski
		PL634 gdański
		PL635 starogardzki

(10) Apart from the main agglomeration areas, the EMUs will regularly stop, i.e. during each journey, in smaller locations on the above-mentioned routes, for which the maximum admissible regional aid intensity for assisted regions under the Guidelines for national regional aid 2007-2013[3] is equal to 50%[4].

Table 2: Regions with the maximum admissible regional aid intensity equal to 50%, covered by the project

[3] Guidelines on national regional aid for 2007 – 2013, OJ C 54, 4.3.2006, p. 13
[4] The regional aid map for Poland was approved by the Commission decision of 13.9.2006 – case N 531/2006 – Poland – Regional aid map 2007 – 2013, OJ C 256 of 24.10.2006, p. 6.

Route	Admissible regional aid intensity equal to 50%	NUTS III
Warszawa – Trójmiasto (Gdańsk, Gdynia, Sopot),	Iława	PL621 elbląski
Warszawa – Krąków – Rzeszów,	Kraków	PL213 Kraków
	Tarnów	PL326 tarnobrzeski
	Rzeszów	PL325 rzeszowski
Warszawa – Katowice – Bielsko-Biala/Gliwice,	Włoszczowa	PL332 sandomiersko -jędrzejowski
Warszawa – Włoszczowa – Częstochowa – Opole – Wrocław	Opole	PL522 opolski

Objectives of the project

(11) According to Poland, the project is in line with the objectives and priorities of its National Development Strategy[5] and is compatible with its strategic objectives.

(12) The Operational Programme Infrastructure and Environment 2007-2013[6] is one of the instruments to achieve the goals of the National Development Strategy. In its Priority Axis VII - Environment Friendly Transport, the Operational Programme aims at: "[…] improving the condition of the railway connections system included in the TEN-T network, and particular sections of the system which are not included in the network, as well as improving passenger services in the international and inter-regional railway transport system". "The implementation of the priority axis shall increase the rate of alternative to road means of transport in total passenger and cargo transport (railway transport, [...]), which shall result in a better balance of the transport system, decrease the negative effects of transport on the environment and limit traffic congestion. The Priority Axis shall implement mainly projects concerning modernisation of railway lines […] as well as projects involving modernisation and purchase of rolling stock and necessary equipment".

(13) In Poland's opinion, the purchase of modern rolling stock will improve the offer for long-distance passenger rail transport, increase the mobility of people living in areas serviced by the new rolling stock and improve the transport cohesion between Poland's largest cities. The implementation of the project will also strengthen the significance of Poland's largest cities as agglomeration centres in the respective regions. Moreover, it will result in a better balance of the transport system, curb the negative effects of transport on the environment and reduce traffic congestion, which mean that it will contribute to the attainment of the objectives and guidelines of the Infrastructure and Environment Operational Programme. The project is also complementary to the objectives of the Regional Operational Programmes. According to Poland, a better mobility of people living in a given region and a higher quality of life, as well as enhanced accessibility to the region, results in a higher attractiveness and competitiveness of the region. In this way, measures can be taken to promote stable economic growth, which is one of the priorities of the Regional Operational Programmes.

Investment costs

5 National Strategic Reference Framework (NRSF) approved by the European Commission on 7 May 2007.

6 Commission decision K(2007)1984 of 7 May 2007 approving some elements of the national strategic reference framework for Poland, CCI 2007PL161PO002.

(14) The total investment costs of the project, covering the acquisition of 20 EMUs and the construction of the workshop amounts, in nominal terms, to PLN 1 775 million (EUR 430 million[7]). The total investment costs in real terms are equal to PLN 1 755 million (EUR 425.1 million)[8].

(15) Financing for the project will come from the following sources:

Source	Amount (in million)	Share of the source in the project's eligible costs
Financial liabilities (loans)	PLN 1 388.7 (EUR 336.4)	78.23%
State aid (grant from the Cohesion Fund's Operational Programme Infrastructure and Environment)	PLN 386.4 (EUR 93.6)	21.77%
Total	**PLN 1 775.1 / (EUR 430.0)**	**100%**

Related projects

(16) The project ties in with projects implemented in Poland, financed from Union funds and public funds, concerning the modernization of railway lines on which the purchased rolling stock will be running as part of the project. Related railway infrastructure projects include:

– Modernization of line E 65 between Warsaw and Gdynia,
– Modernization of line E 65 between Warsaw, Katowice and Bielsko Biala,
– Modernization of line PL/AD 106 – connecting VI and III transport corridors, section Psary – Kozłów – Kraków,
– Modernization of line E 30 between Gliwice, Katowice, Kraków and Rzeszów.

2.2. Direct grant

(17) To finance the project, a direct grant of PLN 386.4 million[9] (EUR 93.6 million; 21.77% of the eligible costs) under the Operational Programme Infrastructure and Environment, Measure 7.1.: Railway Transport Development, for the implementation of the project “Purchase of passenger rolling stock for long-distance passenger connections” has been foreseen. In real terms, the grant is equal to PLN 382.6 million (21.80% of eligible costs)[10].

[7] The exchange rate used: EUR 1 = PLN 4.13 calculated as the average for the period August 2012 – January 2013 of the exchange rates published by the European Central Bank.
[8] The discount rate used is 4.9%. This reflects the discount rate for Poland in the first half of 2013 when the first part of aid was granted (source: http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).
[9] Amount in nominal terms.
[10] See footnote 8.

(18) The source of the grant is funds received from the Cohesion Fund. The aid will be granted in accordance with the financial cash flow principles adopted for operational programmes 2007-2013.

(19) The granting authority is the Minister of Transport, Construction and Maritime Economy acting through Centrum Unijnych Projektów Transportowych (Centre for EU Transport Projects ("CUPT"), a state budget unit within the Minister of Transport, which implements Measure 7.1. of the Operational Programme Infrastructure and Environment.

(20) PKP IC will receive payments as a reimbursement of eligible expenditure, in the form of an advance. The aid is to be paid out according to the following schedule:

	01/06/2013	01/06/2014	**Total**
Aid - nominal amounts (PLN million)	305.2	81.2	**386.4**
Discounted aid (PLN million)			**382.6**
Aid - nominal amounts (EUR million)	73.9	19.7	**93.6**
Discounted aid (EUR million)			**92.7**

(21) Poland confirmed that the aid granted for the project shall not be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible expenses.

2.3. The State guarantee

(22) Poland also provided a state guarantee to PKP IC that serves as collateral for the two commercial bank loans provided by the European Investment Bank (hereinafter: EIB) for the purchase of the 20 EMUs. According to Poland, the guarantee is provided at market terms.

(23) Poland's guarantee covers 80% of the liabilities stemming from the loans, i.e. 80% of the value of the loans, 80% of the associated interest and 80% of other costs directly linked to the loans, for a total of around PLN 1 365 million (≈ EUR 331 million).

(24) In return for the guarantee, PKP IC provided the state collateral totalling 120% of the value of the guarantee. The collateral consists of the following items in the initial period (before the EMUs are delivered):

- 25 blank promissory notes made out by PKP IC together with a promissory note declaration;
- a notarial deed in which PKP IC makes itself subject to enforcement on behalf of the guarantor in respect of a sum totalling 120% of the value of the guarantee, i.e. around PLN 1 639 million (≈ EUR 397 million);
- a power of attorney granted to the guarantor providing bank account access;
- a registered pledge in favour of the guarantor together with an assignment of insurance policies for 22 EP09 engines with a total value of PLN 103 million (≈ EUR 26 million). After the pledge on the new EMUs is established, the pledge on the engines will be released.

(25) After the delivery of EMUs, collateral for the guarantee will take the form of a pledge over the EMUs bought under the project, with a value of 120% of the value of the State guarantee, together with the assignment of rights over the insurance policies for the EMUs covered by the pledge.

(26) In exchange for the guarantee, an annual guarantee fee (i.e. price) will be collected. This will be payable at the amount and under the conditions specified in Section 7 of the regulation of the Polish Council of Ministers of 8 June 2012 on the commission payable on sureties and guarantees provided by the State Treasury (Rozporządzenie Rady Ministrów z dnia 8 czerwca 2012 r. w sprawie opłaty prowizyjnej od poręczenia i gwarancji udzielanych przez Skarb Państwa, Journal of Laws 2012, item 674).

(27) According to that regulation, the value of the guarantee fee is dependent in particular on the financial condition of the undertaking and the duration of the guarantee. Poland maintains that the fee calculated on the basis of this regulation reflects market conditions, ruling out the existence of State aid, as laid down in the Commission Notice on State aid in the form of guarantees[11].

(28) On 15 January 2013, the credit rating agency Fitch assigned PKP IC a long-term foreign currency issuer default rating of BBB-. This rating was affirmed by the rating agency on 28 August 2013 with a revision of the outlook from positive to stable. The revision of the outlook to stable reflected the credit rating agency's revision of the outlook on Poland's long-term foreign and local currency ratings to stable from positive made on 23 August 2013. The credit rating agency has also assigned a long-term local currency rating to PKP IC at BBB. Fitch assesses PKP IC's ratings at three notches below Poland's long-term foreign and local currency ratings which are A-/Stable and A/Stable respectively, due to its strong legal links with the State, and the State's involvement as the company's majority shareholder in PKP IC's financial and operational functions. The duration of the State guarantee exceeds 15 years.

(29) As a result, the guarantee fee that PKP IC will have to pay according to the regulation is 1.2% p.a. on the guaranteed amount.

(30) Poland underlines that the guarantee fee may change if an event occurs which, in the opinion of the Minister for Finance, will have a significant impact on the risk assessment for provision of the guarantee, e.g. if a change occurs to the economic/financial situation of PKP IC. In particular, if the rating of PKP IC deteriorates (specifically, becomes lower than its current rating), the State guarantee fee will be increased to 2.6% p.a.

3. ASSESSMENT

3.1. Existence of State aid

(31) According to Article 107(1) TFEU "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort

[11] The Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008).

competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

(32) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be financed through State resources and be imputable to the State; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

(33) The Commission shall examine both the direct grant and the state guarantee in the light of these conditions to determine whether the measures constitute State aid.

State resources and imputability to the State

(34) The direct grant will be financed using the resources from the Cohesion Fund which are transferred to Poland to implement activities set in the Operational Programme Infrastructure and Environment. The Polish authorities are responsible for implementing and managing the Operational Programme, including the selection of beneficiaries and projects under the specific measures and payment of financing to the ultimate selected beneficiaries for realisation of their projects. Therefore, the financing from the Cohesion Fund is at the disposal of the Polish authorities and imputable to the Polish authorities. Hence, it can be concluded that the direct grant is provided by public authorities and through State resources.

(35) As for the State guarantee covering the repayment of the EIB loans, it was granted by the Ministry of Finance following a delegation given by the Council of Ministers in its Resolution No 137/2013 of 7 August 2013. It can therefore be concluded that the guarantee is provided by the public authorities and through State resources.

Selective economic advantage

(36) The direct grant allows PKP IC to be relieved of a part of the costs which it would normally have to bear itself when purchasing the rolling stock. The direct grant can therefore be considered to confer a selective advantage upon PKP IC.

(37) As for the State guarantee, this should be examined in the first place under the Commission's Guarantee Notice[12], which lays down the principles according to which the Commission examines State guarantees under Article 107 (1) TFEU in individual cases. According to that Notice: "if an individual guarantee or a guarantee scheme entered into by the State does not bring any advantage to an undertaking, it will not constitute State aid"[13]. The existence of an economic advantage to an undertaking can be ruled out if it fulfils the following conditions[14]: (a) the borrower is not in financial difficulty; (b) the guarantee must be linked to a specific financial transaction, for a fixed maximum amount and limited in time; (c) the guarantee does not cover more

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12 Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C155, 20.6.2008, p.10.

13 Section 3.1. Guarantee Notice.

14 Section 3.2. Guarantee Notice.

than 80% of the outstanding loan or, if that is not the case, there is a justification for a higher coverage; and (d) a market-oriented price is paid for the guarantee.

(38) Poland confirmed that PKP IC is not a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulties[15].The guarantee covers two loans taken by PKP IC to finance the purchase of the EMUs. It is given for the period of repayment of the loans. The guarantee fee is predetermined. The guarantee covers 80% of two loans and related costs. Consequently, it can be concluded that conditions (a), (b) and (c) set out above are met.

(39) As regards the condition that a market-oriented price should be paid for the guarantee, the Commission uses various methodologies to analyse whether a guarantee fee is in line with market conditions and, if not, to establish the aid element therein. First, it may be possible to compare the guarantee fee to the price for a guarantee of a similar duration, collateral and risk level, provided by a private bank to the same company, or even in relation to the same loan (*close comparator method*)[16]. Second, in case there is no such readily available information, it may be possible to establish a guarantee premium benchmark on the financial markets (*benchmarking method*). For example, credit default swap (CDS) rates or bond spreads of a comparable group of companies can provide a market benchmark for the guarantee fee[17]. Finally, where market benchmarks are not available (or as a cross-check where market benchmarks are available), a cost-based approach such as Risk Adjusted Return On Capital ("RAROC") can be used to establish the different cost elements of a guarantee, i.e. the expected loss related to credit risk, the required return on capital, and a normal administration fee (*cost approach*).

(40) Both the above-mentioned benchmarking method on the basis of CDS spreads or bond spreads and the cost approach may give rise to the problem that the estimate obtained for a market oriented price is appropriate in the case of guarantors with a very strong credit standing, but overstate the value of the guarantee to the company (and the loan provider/bank) when the State guarantor has a significantly lower credit standing. In those cases, an indirect approach based on a comparison of loan interest rates with and without State guarantee may be a more appropriate method for estimating the market oriented price (*rate differential approach*). Based on that method, the market conform guarantee fee is determined such that the total financial remuneration paid by the beneficiary (the sum of the remuneration for the funding received from private third parties, the guarantee premium plus any fees) is equal to or higher than the total interest rate that the company would pay should it raise equivalent but non state-guaranteed funding from third parties[18]. In other words, the

[15] OJ C 244 of 1.10.2004, p. 2.

[16] When the price and risk conditions underlying the State guarantee are completely identical to that of the private guarantee, this amounts to the application of the *pari passu* principle.

[17] In order to have proper benchmark, it is important however that not only the group of companies is comparable (notably in terms of rating), but also that the state guarantor in question has a good enough credit standing. If this is not the case, the guarantee premium benchmark obtained on the basis of CDS is likely to overstate the value of the guarantee to the company (and bank/loan provider) in question, as CDS spreads typically relate to guarantors with a very strong credit standing.

[18] Where no good market benchmarks for the interest rate exist, a costing approach can be used to establish the different cost elements of the loan interest rate.

market conform guarantee fee for a State guarantee is defined as the difference in financing cost with and without State guarantee.

(41) In the case at hand, the Commission has been able to use the close comparator method, as a commercial guarantee provided by a private bank to PKP IC exists against which the State guarantee can be compared. On 29 October 2013, PKP IC signed a contract with The Royal Bank of Scotland Plc (Netherlands branch) according to which RBS will issue a guarantee covering the remaining 20% of the EIB loans. The guarantee price charged by RBS resulted from a competitive bidding carried out by PKP IC with a number of commercial institutions and has been set at […] % p.a. The guarantee will be secured with a pledge on assets ([…] existing passenger coaches owned by PKP IC) with a value covering […] % of the guaranteed amount. The guarantee will be valid for […] years.

(42) The conditions of the commercial guarantee are to a large extent similar to the conditions of the State guarantee. The commercial guarantee is provided at the same price as the State guarantee, namely […] % p.a. The Loss Given Default (LGD)[19] associated with each guarantee is the same, as the provided collateral covers […]% of the exposure in both cases. The rating levels of the two guarantors seem to be identical as well. The Polish State has a long-term foreign issuer default rating of A- (assigned by Fitch). The Dutch branch of RBS (RBS NV) has a long-term issuer default rating of A (assigned by Fitch) and a long-term foreign issuer credit rating of A- (assigned by S&P). The Commission further notes that the commercial guarantee price was established through a competitive bidding process.

(43) The two guarantees differ, however, in their duration. The State guarantee is provided for the whole duration of the loans (20 years), whereas the commercial guarantee covers only the first 4 years of the loans. The commercial guarantee will have to be renewed after its expiry with a change in the conditions if necessary (for example if the rating of PKP IC has changed). The longer duration of the State guarantee is countervailed by a provision for the possible change in the rating of PKP IC. A deterioration of the rating of PKP IC will result in an immediate increase of the State guarantee price up to […] %, whereas the price of the commercial guarantee is not directly impacted by a drop in the rating of PKP IC. Taken together, this analysis suggests that the guarantee price is likely to be market conform.

(44) As a further check, the Commission has also considered market data in the form of CDS spreads to estimate the interest rates of loans with and without a State guarantee, in order to apply the rate differential approach. Market data is readily available from data providers like Bloomberg and Thomson Reuters. Whereas the EIB loans have a duration of 20 years, they have a weighted average life (WAL) of about 7.5 years (based on 4 years of grace period, duration of 20 years and repayment in equal instalments as confirmed by the Polish authorities). For that reason, one can consider a sample of 10-year CDS rates on (senior unsecured) debt instruments issued by companies with a similar creditworthiness to arrive at a (conservative) benchmark for

[19] Loss Given Default (LGD) is the expected loss in percentage of the debtor's exposure taking into account recoverable amounts from collateral and the bankruptcy assets.

the applicable benchmark rate for 7.5 years[20]. The 10-year CDS rates would serve as an upper bound, as the CDS duration is slightly longer than the WAL of the loans.

(45) The long-term foreign currency issuer default rating of PKP IC is BBB- as assessed by Fitch, hence the interest rate of a loan[21] without a State guarantee can be estimated on the basis of a CDS sample of companies rated BBB-. The sample[22] statistics have an interquartile range of 1.6% - 2.4% with a median at 2.0%. One way to take into account the high recovery rate (respectively low LGD) is to apply an adjustment factor on that rate. In this context, an adjustment factor of two-thirds would appear to be reasonable[23]. The resulting risk margin would be 1.33% (= 2%*2/3). Another possibility to account for the high collateral would be to apply the methodology used by credit rating agencies and notch up the rating of PKP IC with two notches[24] to BBB+. The CDS sample[25] of companies rated BBB+ has an interquartile range of the spreads of 0.9% to 1.4% with a median at 1.2%. Consequently, the risk margin of a loan to a company with a rating of BBB- and LGD close to zero could be estimated in the range of 1.2% - 1.33%.

(46) In the case of the interest rate of the loan with the State guarantee, the State guarantee would improve the recovery rate of the debt instrument because a claim to the State is usually associated with a high recovery rate between 95% and 100% (and respectively low LGD). In addition, the creditworthiness of the debt instrument (the issue rating) tends to be enhanced up to the level of the rating of the State because in the event of the default of the company, the loan provider is faced with the credit risk (the probability of default) associated with that of the guarantor. In the case at hand, Poland has a rating of A- (by Fitch). The CDS sample of A- rated companies shows an interquartile range of 0.8% - 1.1% with a median at 1%. In order to take into account the high recovery rate one can apply the adjustment factor of two-thirds on that rate. The resulting risk margin for the loan with the State guarantee would be 0.67% (=1%*2/3).

(47) Using the rate differential approach based on the CDS samples above would provide a range for the price of the State guarantee between 0.53% and 0.66% (0.66% = 1.33%

[20] CDS rates for a duration of 7.5 years are not available as such. They could be approximated by taking the average of CDS rates of 7 and 8 years, however by taking 10-year CDS it is possible to use a larger sample of observations. Furthermore the 10-year CDS rates would serve as an upper bound of the rates as the CDS duration is slightly longer than the WAL of the loans.

[21] Here the assessment refers only to the risk margin as the base rate and the loan fees would be equal in the case of loan with state guarantee and without state guarantee and will be cancelled in the formula.

[22] The sample consists of 43 observations of 10-year CDS spreads in EUR and USD for the period 1.7.2013 - 30.9.2013 of companies rated BBB- by S&P excluding government related and financial companies.

[23] The adjustment factor broadly reflects the difference in LGD between the collateralisation categories "High" (LGD < 30%) and "Normal" (30% < LGD < 60%) set out in the 2008 Reference Rate Communication. In order to obtain a conservative estimate, the adjustment factor of 2/3 is derived by using the upper bound of the low LGD range (0% to 30%) as the numerator (equal to 30) and the middle of the normal LGD range (30% - 60%) as the denominator (equal to 45). See also Commission Decision of 3 October 2012 in Case SA.23600 – Germany – Financing arrangements concerning Munich Airport Terminal 2, para 111.

[24] According to published methodologies of credit rating agencies, when a company's rating is in the 'BBB' rating category and its debt is well-secured the issue rating will be one or two notches above the corporate rating, depending on the extent of the collateral coverage. See Standard and Poor's "Corporate Ratings Criteria", 2008, p. 93

[25] The sample consists of 47 observations 10-year CDS spreads in EUR and USD for the period 1.7.2013 - 30.9.2013 of companies rated BBB+ by S&P excluding government related and financial companies.

- 0.67% and 0.53% = 1.2% - 0.67%). This approach also shows that the price of […] % for the State guarantee is above the estimated market conform price range and can thus be considered as in line with market conditions.

(48) In conclusion, according to the close comparator method, the State guarantee price of […]% p.a. can be deemed in line with market conditions as it corresponds to the price of a commercial guarantee with comparable characteristics. The analysis based on the rate differential approach shows that the guarantee price of […]% is somewhat above the estimated market conform price range and can thus be considered as in line with market conditions. It can therefore be concluded that point (d) of the Guarantee Notice is met, so that the State guarantee should not be considered to confer a selective advantage upon PKP IC.

Distortion of competition and effect on trade between Member States

(49) PKP holding provides freight and passenger services by rail. According to the Directive on the development of the Community's railways,[26] the international rail freight transport is liberalised as from 1 January 2006 and all other rail freight transport services as from 1 January 2007. PKP IC provides international passenger services that are also opened to competition[27]. Moreover, when providing passenger services, PKP IC compete with other modes of transport. Consequently, the aid is liable to distort competition and affect trade between Member States.

Conclusion on the existence of aid

(50) For the reasons laid out above, the Commission finds that:

- the direct grant to PKP IC to finance the purchase of the EMUs constitutes State aid within the meaning of Article 107(1) TFEU;

- the guarantee covering the EIB loans for the purchase of the EMUs does not confer a selective advantage upon PKP IC, as complies with the conditions laid out in the Guarantee Notice, and therefore does not constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility of the aid

(51) In the following section, the Commission will examine whether the direct grant to PKP IC can be deemed compatible with the internal market. Since the investment in the technical maintenance workshop is indispensable to implement the project and the workshop will be used exclusively to serve the 20 EMUs purchased under the project, the Commission finds it relevant to assess the compatibility of the aid for the rolling stock and the dedicated technical maintenance workshop together, as one investment aid, by applying rules for the purchase of rolling stock.

[26] Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways OJ L 164 of 30.4.2004, p.164.

[27] The international passenger rail transport market was opened to competition as of 2010, based on the provision of Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, OJ L 315 of 3.12.200.

(52) PKP IC is a railway undertaking under the terms of Article 3 of Directive 91/440/EEC.[28] The aid must therefore be examined in the light of the Community Guidelines on State aid for railway undertakings[29], in particular point 15 thereof.

(53) Chapter 3 of the Railway Guidelines provides guidance on the assessment of aid for the purchase and renewal of rolling stock. Point 31 of those Guidelines explains that that compatibility assessment has to be made according to the common-interest objective to which the aid is contributing. In assessing the compatibility of aid for the purchase of rolling stock, the Commission therefore applies the criteria for the category of aid which the measure seeks to achieve. Point 33(f) of the Guidelines lists regional aid as one such category.

(54) Where regional aid is granted for the purchase of rolling stock points 34 to 40 of the Railway Guidelines apply, as well as the relevant provisions of the Regional Aid Guidelines ("RAG"), provided that they are not explicitly subject to derogations laid down in the abovementioned provisions of the Railway Guidelines.

3.2.1. Assessment under the Railway Guidelines

(55) Point 34 of the Railway Guidelines states that "[i]n the case of regional aid for initial investment, the Guidelines on national regional aid […] provide that 'in the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for aid for initial investment' (point 50, footnote 48). The Commission considers that a derogation should be made from this rule with regard to rail passenger transport. This is due to the specific characteristics of this mode of transport, and in particular to the fact that it is possible that the rolling stock in this sector may be permanently assigned to specific lines or services." In this regard, the Commission notes that the aid to PKP IC relates to the purchase of rolling stock intended for the transport of passengers. It is thus an investment within the meaning of point 34 of the Railway Guidelines.

(56) Point 35 of the Railway Guidelines states that the derogation set up in point 34 of the Railway Guidelines applies to any kind of investment in rolling stock – whether initial or for replacement purposes, so long as it is assigned to lines regularly serving a region eligible for aid under Article 107(3)(a) TFEU. Since the whole territory of Poland is eligible for investment aid under the derogation provided for in Article 107(3)(a) TFEU and the rolling stock will regularly serve lines solely located in Poland, the Commission finds the investment in line with point 35 of the Railway Guidelines.

(57) Point 36 of the Railway Guidelines sets out four conditions which must be cumulatively satisfied for the above-mentioned derogation to apply.

[28] Council directive of 29 July 1991 on the development of the Community's railways, OJ L237 of 24.8.1991, p. 25.
[29] Communication from the Commission - Community guidelines on State aid for railway undertakings, OJ C184 of 22.7.2008, p. 13

(a) The functional assignment of rolling stock

(58) The rolling stock concerned must be exclusively assigned to urban, suburban or regional passenger transport services. However, the allocation to interregional transport services is permissible only if it can be shown that there is an impact on the regional development of the regions served, in particular in terms of the regular nature of the service, and the Commission verifies that the aid does not compromise the effective opening of the international passenger transport market and cabotage following the entry into force of the third railway package.

(59) The beneficiary is obliged to use the purchased rolling stock exclusively for interregional regular passenger rail services on the determined routes in Poland. These services will, among other, facilitate and encourage the mobility of the workforce and stimulate the development of regions fully eligible under Article 107(3)(a) TFEU.

(60) The Commission considers that, because of the targeted nature of the investment aid, the aid does not compromise the effective opening of the international passenger transport market and cabotage following the entry into force of the third railway package. Moreover, Poland has already opened its domestic commercial passenger transport market to competition.

(61) In light of the foregoing, the Commission considers that the criterion for allocating the investment set out in point 36(a) of the Railway Guidelines has been met by the measure under review.

(b) The regional allocation of railway rolling stock

(62) The Railway Guidelines provide that the rolling stock must remain exclusively assigned to the specific region or the specific line passing through several different regions for which it has received aid for at least ten years.

(63) In this respect, Poland has indicated that the rolling stock purchased with the aid will be operated exclusively for the needs of interregional passenger transport. The beneficiary is obliged to serve clearly determined routes for a minimum period of 10 years.

(64) On this basis, the Commission finds that the criterion of geographical allocation, set out in point 36(b) of the Railway Guidelines, has also been met.

(c) Technical and environmental standards

(65) The replacement rolling stock must meet the latest interoperability, safety and environmental standards applicable on the relevant network.

(66) The rolling stock acquired under the project will have a certificate of compliance with applicable environmental, safety and interoperability standards. In particular, the

rolling stock will conform to technical requirements set out in TSI HS[30] and TSI PRM[31].

(67) It follows therefore that the measure under review complies with the criterion described above and set out in point 36(c) of the Railway Guidelines.

(d) Contribution to a coherent regional development strategy

(68) As a final condition, the Member State must prove that the project contributes to a coherent regional development strategy. The Commission has concluded, on the basis of the arguments put forward by Poland and set out in recitals (11) to (13) of this decision that the measure does indeed contribute to a coherent regional strategy, in accordance with point 36(d) of the Railway Guidelines.

(69) Poland committed that the rolling stock of PKP IC replaced with the purchased rolling stock will be transferred to serve PSCs contracted to PKP IC by Poland. The transfer of rolling stock will reduce the compensation paid to PKP IC for carrying out the PSC and in this way the possibility of having additional revenue from the replaced rolling stock will be eliminated. Therefore, the Commission finds that the measure is in line with point 37 of the Railway Guidelines.

(70) Point 38 of the Railway Guidelines states that the other conditions provided for in the RAG, notably as regards the intensity ceilings and the regional aid maps and the rules on cumulation of aid apply. When the specific lines concerned pass through regions where there are different applicable aid intensity ceilings, the highest intensity among those applicable to the regions regularly served by the line concerned, in proportion to the regularity of such service, shall be applied. The Commission notes that, as presented in recitals (8) to (10), the rolling stock will be permanently assigned to specific lines which will continuously serve regions with aid intensity ceilings equal to 50%. This aid intensity ceiling should therefore apply to the project.

(71) Point 39 of the Railway Guidelines states that, with regards to investment projects with eligible expenditure in excess of EUR 50 million, a derogation shall be made from points 60 to 70 of the RAG. However, points 64 and 67 of the RAG remain applicable when the investment project concerns rolling stock assigned to a specific line serving several regions. The Commission has therefore also assessed, in recitals (81) and (82) below, whether the scheme is in line with points 64 and 67 of the RAG.

(72) Finally, point 40 of the Railway Guidelines stipulates that, if the beneficiary is entrusted with providing services of general economic interest that necessitate buying/renewing rolling stock and it already receives compensation for this, that compensation should be taken into account in the amount of regional aid that may be awarded to this beneficiary, in order to avoid over-compensation. Since the rolling

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[30] The European Commission Decision of 21 February 2008 concerning technical specification for interoperability relating to the rolling stock subsystem of the trans-European high speed rail system. OJ L 84 of 26.3.2008, p. 132.

[31] The European Commission Decision of 21 December 2007 concerning the technical specification of interoperability relating to ‘persons with reduced mobility’ in the trans-European conventional and high-speed rail system. OJ L 64 of 7.3.2008, p. 72.

stock will not be used to provide services under PSCs, the Commission finds that this condition does not apply to the measure under review.

(73) In light of the above, the Commission considers that the assessed investment aid fulfils all the relevant conditions under the Railway Guidelines.

3.2.2. Assessment under the Regional Aid Guidelines 2007-2013

(74) As stated in paragraph 32 above, point 38 of the Railway Guidelines refers to the RAG for other compatibility requirements.

Eligible expenses

(75) Point 33 of the RAG provides that regional investment aid is aid for an initial investment project. Since the assessed investment project leads to a diversification of services offered by PKP IC, the Commission finds that it is an initial investment in line with point 34 of the RAG.

(76) Point 36 of the RAG states that regional investment aid can be calculated in reference to material and immaterial investment costs resulting from the initial investment project while point 37 of the RAG explicitly lists grants as a permissible form of regional aid. The Commission notes that these two conditions are fulfilled by the assessed investment aid.

(77) Point 50 of the RAG states that expenditures on land, buildings and plant/machinery are eligible for aid for initial investment. However, the footnote to this point specifies that in the transport sector, expenditure on the purchase of transport equipment (movable assets) is not eligible for aid for initial investment. As already explained, in point 34 of the Railway Guidelines, the Commission considers that a derogation should be made from this rule with regard to rail passenger transport. Since the aid concerns expenditures on buildings, machinery and passenger rolling stock, it complies with point 50 of the RAG.

Incentive effect

(78) Point 38 of the RAG requires that regional aid should have a real incentive effect, in the sense of leading beneficiaries to undertake investments which would not otherwise be made in assisted areas. Therefore, in the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project. Such a letter was issued on 15 January 2009 by the Ministry of Infrastructure while the agreement on the purchase of rolling stock was signed with the supplier on 30 May 2011. Thus, the condition of point 38 of the RAG is satisfied.

(79) Point 39 of the RAG states that the beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form which is free of any public support. Since the beneficiary finances more than 78% of the eligible costs by external financing and the loans from EIB are covered by a guarantee granted at market terms, this point of the RAG is fulfilled.

(80) Point 40 of the RAG provides that aid must be made conditional on the maintenance of the investment in question in the region concerned, for a minimum period of at least five years after its completion. The assessed aid satisfies this condition of the RAG because the beneficiary is obliged to use the purchased rolling stock on the determined routes for at least 10 years.

Aid intensity

(81) In case of large investments projects, the RAG provide detailed rules on transparency and monitoring. As mentioned in paragraph 63 above, points 64 and 67 of the RAG remain applicable when a large investment project concerns rolling stock assigned to a specific line serving several regions. Point 64 of the RAG applies to aid schemes only. Thus, it is not applicable to the assessed individual, ad-hoc aid.

(82) According to point 67 of the RAG, aid for large investment projects (i.e. where the eligible expenditure exceeds in real terms EUR 50 million) is subject to an adjusted regional aid ceiling. Using the formula included in point 67 of the RAG, the maximum permissible aid intensity for the assessed investment (for which the eligible investment costs amount to EUR 425.1 million, in real terms) is 21.82%. As presented in paragraph 17, the foreseen aid intensity for the project is 21.80%, i.e. below the maximum permissible aid intensity. Thus, point 67 of the RAG is fulfilled.

Rules on cumulation

(83) Section 4.4 of the RAG contains the rules on the cumulation of aid. Point 71 stipulates that the aid intensity ceilings laid down in the RAG apply to the total aid: (i) where assistance is granted concurrently under several regional schemes or in combination with ad hoc aid; and (ii) whether the aid comes from local, regional, national or Community sources. According to point 75 of the RAG, regional investment aid shall not be cumulated with de minimis support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the guidelines.

(84) Poland has confirmed that the assessed regional investment aid cannot be cumulated with other aid if such cumulation would result in an aid intensity exceeding the aforementioned applicable regional aid intensity ceiling. Thus, the RAG's conditions on the cumulation of aid are satisfied.

(85) Taking the afore-mentioned into consideration, the Commission finds the assessed investment aid in compliance with the RAG.

4. CONCLUSION

Based on the above findings, the Commission decides that:

– the state guarantee granted to PKP IC in the context of the purchasing of rolling stock does not constitute aid.

– the investment aid in the form of direct grant for the purchasing of rolling stock by PKP IC fulfils all the conditions laid out by both the Railway Guidelines and the RAG and is therefore compatible with the internal market in accordance with Articles 107(3)(a) and 107(3)(c) of the TFEU.

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
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